



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Employment and Social Affairs

2012/2061(INI)

31.5.2012

DRAFT REPORT

with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring
(2012/2061(INI))

Committee on Employment and Social Affairs

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(Initiative – Rule 42 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring (2012/2061(INI))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Articles 9, 151 and 153.1 e) of the Treaty on the Functioning of the European Union,
- having regard to Articles 14, 27 and 30 of the Charter of Fundamental Rights of the European Union,
- having regard to 'Managing change - Final report of the High Level Group on economic and social implications of industrial change, set up by the Luxembourg Employment Summit of November 1997'¹,
- having regard to Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation)²,
- having regard to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)³,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁴,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁵,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees⁶,
- having regard to European Parliament and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community,
- having regard to Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute

¹ OJ C 258, 10.9.1999, p.p. 1-5.

² OJ L 245, 26.8.1992, p.p. 0053-0055.

³ OJ L 294, 10.11.2001, p. 1.

⁴ OJ L 225, 12.8.1998, p.16,

⁵ OJ L 82, 22.3.2001, p. 16-20.

⁶ OJ L 294, 10.11.2001, p. 22.

for a European Cooperative Society with regard to the involvement of employees¹,

- having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids²,
- having regard to Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies³,
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁴,
- having regard to the Commission communication of 31 March 2005 on 'Restructuring and employment: Anticipating and accompanying restructuring in order to develop employment: the role of the European Union' (COM(2005)0120) and the opinion of the European Economic and Social Committee of 14 December 2005 (CESE 1495/2005)⁵,
- having regard to the Commission communication on the Social Agenda (COM(2005)0033),
- having regard to the Commission communication on a Council decision on guidelines for the employment policies of the Member States (COM (2010)0193) and the Council decision of 21 October 2010 establishing guidelines for the employment policies of the Member States⁶,
- having regard to the Commission communication on 'An Integrated Industrial Policy for the Globalised Era Putting Competitiveness and Sustainability at Centre Stage' (COM(2010)0614),
- having regard to the Commission communication on "Towards a Single Market Act" (COM(2010)0608 final/2)
- having regard to the Commission communication on "An Agenda for New Skills and Jobs" (COM (2010)0682),
- having regard to the Commission communication on "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" (COM(2012)0007),
- having regard to the Commission communication on "Towards a job rich recovery" (COM (2012)0172),

¹ OJ L 207, 18.8.2003, p. 25.

² OJ L 142, 30.04.2004, p. 0012 - 0013

³ OJL 310, 25.11.2005, p. 0001 - 0009

⁴ OJ L 122, 16.5.2009, p.28-44.

⁵ EESC, CCAI/027.

⁶ Council of the European Union, 15184/10, Presse 283, 21.10.2010.

- having regard to its resolution of 26 May 2005 on the Social Agenda for the period 2006-2010¹,
 - having regard to its resolution of 10 May 2007 on strengthening European legislation in the field of information and consultation of workers²,
 - having regard to its resolution of 9 March 2011 on an Industrial Policy for the Globalised Era³,
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0000/2012),
- A. whereas restructuring is not a new phenomenon but in recent years it has taken on new forms, a more prevalent nature and a broad geographical and sectorial coverage in Europe;
- B. whereas the crisis which began in 2008 has only speeded up the rate of change sharply; whereas it has added to the structural pressures to adapt to change resulting from globalisation's more immediate constraints which subject undertakings, workers, territories and governments to critical tensions;
- C. whereas, as consistently highlighted in recent policy papers from the Commission, especially the Europe 2020 Strategy and the Industrial Policy Communication of 27 October 2010, "Better anticipating and managing restructuring would help employees and companies to adapt to transitions imposed by excess capacities and by modernisation and structural adjustment". (...) "Management and employees' representatives are the key players to agree on restructuring strategies at company level. Policy interventions should accompany such restructuring to avoid social hardship and promote new skills and jobs, thus avoiding mass redundancies and the decline of entire regions or the relocation of entire industries, by facilitating economic conversion and professional transition.";
- D. whereas job losses were almost double job creation in the third quarter 2011 with the announcement of major restructurings in strategic fields and this trend is likely to increase;
- E. whereas, as stated in the Annual Growth Survey: advancing the EU's comprehensive response to the crisis, "the positive export performance of some Member States shows that success in global markets relies on wider factors such as sector specialisation, innovation, and skills levels that enhance real competitiveness";
- F. whereas also in its Communication on An Agenda for New Skills and Jobs of 23 November 2010, the Commission recognises that "adaptability and pro-activity when moving jobs or occupations may however be hampered by insecurity because transitions bear a potential hazard of unemployment, lower wages and social insecurity; whereas positive transitions along people's career paths are therefore essential in order to adapt

¹ OJ C 117E, 18.5.2006, p. 256-262.

² OJ C 76 E, 27.3.2008, p. 138.

³ Texts adopted, P7_TA(2011)0093.

constantly, maintaining and increasing employability while providing security for individuals and fluidity in labour markets.";

- G. whereas, as stated in the Single Market Act, "The Lisbon Treaty, and the affirmation of the concept of a 'highly competitive social market economy' as one of its key objectives, require the EU to adopt a more all-embracing view of the single market (...) A European framework for restructuring exercises would make for an environment based on mutual trust.";
- H. whereas, however, the "Orientations for reference in managing change and its social consequences" drawn up by the social partners in October 2003 have not been followed by any significant measure leading to the practical implementation and concrete application of those guidelines;
- I. whereas the Commission has looked for concrete contributions on how to further develop policy in this area through its "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" of 17 January 2012;
- J. whereas, in spite of the above mentioned strong statements, the Commission has delivered disappointing responses to parliamentary resolutions on information, consultation and restructuring, highlighting the need for urgent and concrete steps in this area, as well as to requests coming from other economic and social players;
- K. whereas this resolution is without prejudice to information and consultation obligations resulting from other EU and national law; insofar as these so provide, information and consultation procedures should be fully used to apply the rules laid down in the present Resolution";
- L. whereas, after consulting the European social partners twice in the past decade 2000, the Commission has failed to take practical steps to ensure the wide application throughout the Union of the anticipative and proactive approaches and socially responsible restructuring practices that it recalls in so many policy documents (see above);
- M. whereas good information and consultation in relation to restructuring means a more intelligent, proactive, responsible and strategic manner, which will contribute to making undertakings and the EU more competitive, as well as sending out a message of certainty and transparency to European citizens at a time of crisis;
 - 1. Requests the Commission to submit to the Parliament within three months of the date of adoption of this resolution on the basis of Article 225 of the Treaty, a legislative proposal for a directive as recommended in the Annex;
 - 2. Confirms that the recommendations respect the principle of subsidiarity and proportionality and the fundamental rights of citizens;
 - 3. Considers that the requested proposal will have no financial implications;
 - 4. Instructs its President to forward this legislative proposal and the accompanying detailed recommendations to the Commission and the Council.

**ANNEX TO THE MOTION FOR A RESOLUTION
DETAILED RECOMMENDATIONS AS TO THE CONTENT
OF THE PROPOSAL REQUESTED**

Recommendation 1

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION ,

- having regard to the Treaty on the Functioning of the European Union and in particular to Article 153.1 e) thereof ,

Whereas:

- (1) When dealing with anticipation, preparation and management of restructuring, companies, workers' representatives and the other stakeholders act in a spirit of cooperation, based on timely and comprehensive information and consultation.
- (2) Anticipation, preparation and management of change must take place in the context of strengthening social dialogue and with a view to promoting change in a manner compatible with the preservation of the priority objective of employment.
- (3) There is a need to envisage, promote and enhance anticipatory measures concerning the company situation and likely development of employment, in particular where employment may be under threat.
- (4) Restructuring is facilitated and its impact softened when companies develop on a permanent basis the skills and competences of their workers.
- (5) Good restructuring practices require preparation as early as possible and starting as soon as the need to restructure is envisaged, making it possible to avoid or to reduce to a minimum its economic, social and territorial impact.
- (6) It is a widely recognised that any restructuring operation should be subject to an explanation and of a justification to the stakeholders,
- (7) Serious action aimed at limiting the impact of restructuring requires companies to envisage redundancies as a last resort and only after having considered all possible alternative options and/or implemented possible supporting measures.
- (8) The active involvement of public authorities at the relevant level in the preparation and management of restructuring operations contributes greatly to limiting their negative impact.
- (9) It is important that companies create tools, in conjunction with employees' representatives, for regular evaluation and reporting on their restructuring practices.

- (10) Such an EU framework should apply to major companies and groups of companies, those which employ on the territory of the EU at least 500 workers, and to the restructuring operations of a certain dimension, covering at least 100 workers in a single company or 500 employees in a company and its dependent companies or one or more Member States over a period of three months.
- (11) Any EU framework on anticipation, preparation and management of change and restructuring should encourage and give precedent to agreement between the most concerned parties, only in the absence of which standard rules should apply.

SECTION I

GENERAL

Recommendation 2

Objective

1. The purpose of the Directive is to promote and facilitate information and consultation in economic change and improve the way in which companies, employees' representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.
2. To that end, companies and employees' representatives, when dealing with restructuring, in a spirit of cooperation, by recognizing that these processes aim at protecting at the same time the interests of companies as regards competitiveness and sustainability and those of their employees.

Recommendation 3

Definitions and scope

1. For the purposes of the Directive:
 - a) "companies" mean companies and groups of companies employing at least 500 employees in the EU, as well as any company part of the group referred to above;
 - b) "dependent companies" mean companies in a situation of dependence of the ones above by reasons of subcontracting, supply contract and others;
 - c) "employees' representatives" mean the ones provided for by national law and/or practice;
 - d) "agreements" mean agreements concluded at the relevant level (European, national, sectoral, regional or company-level) by, on one hand, representatives of the companies

and/or their organisations, and, on the other hand, representatives of the employees with the capacity to conclude collective agreements under national law and/or practice or under the procedures laid down by the competent trade union organisations at European level;

- e) "employees" mean the employees of the companies covered by the Directive whatever the type of employment contract;
- f) "public authorities" mean bodies of the public administration at relevant level as designated by Member States;
- g) "restructuring operation" means any re-organisation of the structure, of work processes and organisation, of the location with a quantitative or qualitative impact on employment;

2. The present Directive covers restructuring operations affecting at least 100 employees in a single company or 500 employees in a company and its dependent companies in one or more Member States over a period of three months.

SECTION II

ANTICIPATION OF CHANGE

Recommendation 4

Long-term strategic planning, adaptability and employability

1. Any restructuring operation is integrated into a long-term strategy aiming at ensuring and strengthening the long-term sustainability and competitiveness of the company.
2. Long-term strategic planning includes human resources, employment and skills objectives focussed on developing on a permanent basis the skills and competences of the workforce in order to increase the competitiveness of the company and its capacity of adaptation, as well as to increase the employability of employees and to manage their internal and external mobility.
3. To that end, companies recognise the right for every employee to benefit from appropriate training. Employees recognise that education and lifelong learning are necessary to strengthen their employability and accept relevant training offers.

Recommendation 5

Anticipation of employment and skills needs

1. Companies develop, in cooperation with employees' representatives and, as appropriate, with public authorities and other relevant stake-holders, mechanisms of anticipation and of forward-looking planning of employment and skills needs.

2. To that purpose, companies establish, in co-operation with employees' representatives and other relevant stakeholders:

- a) mechanisms for long-term planning of quantitative and qualitative employment and skills needs linked to innovation and development strategies and taking into account the foreseeable evolution of employment and skills, positive and negative;
- b) multiannual plans of employment and skills development covering the following areas:
 - support to the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;
 - educational leaves;
 - specific training measures to tackle possible negative or problematic developments.

3. Every employee shall be offered a given number of hours of training per year to be determined by law and/or collective agreement. Any refusal to accept that offer by employees shall be only admitted on justified grounds.

4. The provisions of paragraphs 1 to 3 above do not apply to companies and employees covered by an agreement concluded at the relevant level and with the relevant parties on the procedures for anticipating and forward-looking planning of employment and skills needs.

5. Dependent companies are informed of the mechanisms and plans provided for in paragraph 2. Their employees shall be covered by those mechanisms and plans upon the request of the dependent company, justified on the grounds that those mechanisms and plans are required or useful for their own adaptation and development.

SECTION III

PREPARATION AND MANAGEMENT OF RESTRUCTURING PROCESSES

Recommendation 6

Early preparation

1. Except in circumstances where restructuring is triggered by unforeseen or sudden events, any restructuring operation is preceded by an appropriate preparation with all the concerned stakeholders with a view to prevent or alleviate its economic, social and local impact.

2. This preparation is done as early as possible and starts as soon as the need to restructure is being contemplated. It is in any case, except in the exceptional circumstances referred to in

paragraph 1 above, carried out within a timeframe that allows for the adoption of measures making it possible to avoid or to reduce to the minimum its economic, social and local impact.

Recommendation 7

Information and consultation concerning business decision

1. Any restructuring operation is subject to an early explanation and to a justification to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints.
2. The dialogue provided for in paragraph 1 shall include the justification of the choice of the measures envisaged in relation to the objectives and to other possible options in the light of all the interests concerned.
3. Companies inform from the start the public authorities at the relevant level, in particular at local level, and involve them in the preparation of the restructuring process.
4. The local economic actors, in particular companies and their employees being in a situation of dependence towards the restructuring company.

Recommendation 8

Minimising internal social costs through a social plan

1. When the need to restructure occurs and while always seeking to preserve their competitiveness and long-term prosperity, companies envisage redundancies only as last resort and only after having considered all possible alternative options and/or identifying and implementing supporting measures.
2. In particular, companies shall consider the following options as alternatives for redundancies:
 - phasing planned measures over time;
 - reduction in work intensification;
 - working-time reduction or re-organisation;
 - re-negotiation of working conditions;
 - internal or external redeployment;
 - in-sourcing of external activities;
 - negotiated departures;
 - natural departures
3. When redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, companies shall make available to the employees concerned measures aimed at re-enforcing their employability and helping them to re-enter the labour market as quickly as possible.

Recommendation 9

Agreements on managing restructuring processes

The provisions of Recommendations 6 and 7 do not apply to companies and employees covered by an agreement concluded at the relevant level and with the relevant parties on the procedures and mechanism for preparing, managing in a socially responsible way and minimising internal social costs of restructuring operations.

Recommendation 10

Minimising external economic and social impacts

1. When a restructuring operation has major local effects companies seek to develop complementarities and synergies between their preparatory action and the actions of the all the other actors with a view to maximising the re-employment opportunities of employees in risk or to be made redundant, to encouraging economic and social re-conversion and to developing new economic activities generating jobs.
2. The measures referred to in Recommendation 7 shall cover, as far as possible, the employees of companies that are dependent by reasons of subcontracting, supply contract and others. Dependent companies and their workers are, in any case, informed of those measures insofar as such information is required or useful for their own adaptation and for the management of the restructuring process within them.

SECTION IV

PUBLIC SUPPORT MEASURES

Recommendation 11

Public support

1. Public authorities at different levels intervene in anticipation and management by:
 - a) Promoting the co-ordination of the work of external stakeholders with the work developed within companies
 - b) Supporting anticipating processes and particular restructuring operations with a view to alleviate their economic and social impact
2. Public authorities monitor the mechanisms for long-term planning and multi-annual plans of employment and skills needs developed within companies.
3. In regions affected by structural change, public authorities shall:
 - a) create permanent bodies, networks or observatories to monitor change processes;

- b) promote territorial employment pacts aimed at favouring employment creation and adaptation;
- c) promote or create mechanisms facilitating employment transitions;
- d) implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;
- e) favour regional employment and economic and social re-conversion.

Recommendation 12

Financial support

1. Without prejudice to companies' obligations resulting from national laws and/or practices, public authorities shall co-finance employability measures favouring employees of companies undergoing restructuring, insofar as this type of support is necessary or appropriate for allowing them to re-enter quickly the labour market.
2. In accordance with the rules governing them, European Union Funds, and in particular ERDF, ESF and EGF funds, may be used in supporting integrated action to anticipate and to prepare for restructuring, as well as in helping employers to adapt to change for the purposes of paragraphs 1 and 2.

Recommendation 13

Designation of the relevant public authorities

Member States shall designate the public authorities, at national, regional and/or local level that are responsible for the purposes of the Directive.

SECTION V

FOLLOW-UP, EVALUATION AND REPORTING OF RESTRUCTURING PROCESSES

Recommendation 14

Follow-up, evaluation and reporting

1. Companies shall monitor on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both redundant employees and those staying in the company.
2. Companies create tools of regular evaluation and reporting on its practices of restructuring,

in co-operation with employees' representatives and the external organisations involved in that process.

SECTION VI

MISCELANEOUS PROVISIONS

Recommendation 15

Confidential information

1. Member States shall provide that employees' representatives and any other person who accedes to information which has expressly been provided to them as a result of the Directive are not authorised to reveal it if it has been delivered on a confidential basis.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that companies are not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm their functioning or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

Recommendation 16

Compliance with the Directive

1. Member States shall provide for appropriate measures in the event of failure to comply with the Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced.

2. Member States shall provide that companies that do not comply with the provisions resulting from the Directive shall not benefit from any funding in provenance of European Union budget in the five years period following a judicial decision recognising the breach.

3. Member States shall exclude from the benefit of public aids in provenance from the national budgets during the same period companies that are in the situation referred in paragraph 2 above.

4. The provisions of paragraphs 2 and 3 do not preclude in any way the use of funds in provenance from the European Union and national budgets in direct benefit of the employees of the companies referred to therein.